IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 725 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVENDRAPRASAD BHAGWANJI PANDYA - Applicant(s)
Versus
THE STATE OF GUJARAT & 8 - Respondent(s)

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Appearance :
MR IH SYED for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE UNSERVED for Respondent(s) : 2 - 7.
MR YN RAVANI for Respondent(s) : 8,
MS AVANI S MEHTA for Respondent(s) : 9,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 04/10/2007

ORAL JUDGMENT

1. In the present petition, the petitioner has prayed that the respondents be directed to

strictly comply with the directions issued by the Division Bench of this Court in Special Civil Application No.2617/2001 passed on 2.5.2001.

2. The petitioner was original respondent no.9 in the above-mentioned Special Civil Application No.2617/2001 which was filed in the nature of Public Interest Litigation. On 2.5.2001, Division Bench of this Court passed the following order :

> "1. After hearing learned counsel for the parties, we issue notice to respondents nos. 8 and 9 (in SCA No.2617 of 2001) returnable on 28th June, 2001. If they are in custody, notice may be served through jail.
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> 2. In view of the judgments of the Supreme court in Jagruti Upbhokta Kalyan Parishad vs. Union of India, (1998) 5 SCC 340 and (1998) 9 SCC 68, we direct that all immovable properties of the bank as well as respondent Nos. 8 and 9, their sister concerns and their relatives be kept under attachment by the investigating agency, till further orders. The investigating authority will also impound the passports of respondents Nos.8 and 9 immediately, if not impounded, so far.
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> 3. CBI (B.S.& F.C) with the cooperation of the CID (Crime) is directed to conduct investigation against the deeds and misdeeds of respondents Nos. 8 and 9 forthwith and will also go through the question of mismanagement on the part of the respondent bank and the concerned officers who are found to have been involved in the above acts, over and above respondents Nos. 8 and 9.
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> 4. In order to solve the problems of the depositors, RBI and other concerned authorities may also render their assistance in its real spirit and assist the court on the next date of hearing.
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> 5. In view of the letter dated 14.3.2001 written by RBI to various cooperative banks, it is clarified that in view of the guidelines given by it to various banks, it will be open to such cooperative banks to permit withdrawals of premature fixed deposit receipts which are not due for repayment, after considering the said guidelines of RBI regarding their capacity to discharge their current liabilities. It is also clarified that

there is no mandate given by the RBI but they are guidelines and it is expected that the concerned cooperative banks will allow withdrawal of premature FDRs considering the aforesaid guidelines . Since RBI has given these guidelines on some rational basis, the concerned cooperative banks will consider the same in their proper perspective before allowing such premature payment of FDRs.Mr. Vakil for the RBI submitted that these guidelines have been given in order to see that if concerned banks are not in a position to meet with their current liabilities, it may create further serious problems as has happened in the present case. It is with this object that guidelines are given which is not a mandate as such. Therefore,the concerned banks may consider the same while deciding the question of allowing premature withdrawal of FDRs.

6. Matters will be considered on other issues on the next date.

7. However, in view of the request made by Mr. H.D. Vasavada that his client is willing to help out the present situation by providing necessary finance, these matters are kept tomorrow, 3rd May, 2001 for this limited purpose. Matters may be notified on 3rd May, 2001."

3. Shortly stated, case of the petitioner is that it is only CBI which can inquire into any allegation against the petitioner as directed by the Division Bench in the above-mentioned order and no other Investigating Agency would have authority to investigate into the complaint against the petitioner.

4. Learned advocate for the petitioner submitted that large number of complaints have been filed against the petitioner which are repetitive in nature only with a view to harass the petitioner and such complaints are being investigated by the State Investigating Agency. It is submitted that this action is opposed to the directions issued by the Division Bench of this Court.

5. On the other hand, respondents opposed this petition and submitted that the order of the Division Bench and in particular, directions issued in paragraph-3 thereof pertained to one single complaint which was before the Court in the said Public Interest petition. Substantially, however, large number of criminal complaints have been filed against the petitioner and it is therefore, open for the Investigating Agency under the State Government to investigate the same.

6. Having heard the learned advocates appearing for the parties, I find that there is nothing emerging from the order of the Division Bench and in particular, directions contained in paragraph-3 thereof, to suggest that all future investigations must also be necessarily handed over to CBI. It is not in dispute that the criminal cases being investigated into by the Investigating Agency under the State Government were filed after the order was passed by the Division Bench on 2.5.2001. Apparently, the petitioner was the Managing Director of a Co-operative Bank in which several complaints have been made of mal-practice and of dishonest misappropriation of funds of the members of the public. Apparently, a Public Interest Litigation has been filed seeking directions for proper investigation into some of the allegations of

deeds and misdeeds of the Office Bearers of the said Bank. The above-mentioned petition is still pending before this Court. The petitioner however, was not inclined to approach the Bench for necessary clarification in this regard. I have therefore, examined the issues as appearing from the material on record.

7. As stated earlier, I find nothing on record to suggest that in above-mentioned order dated 2.5.2001, Division Bench of this Court desired that all pending and future complaints be inquired into only by CBI and no other agency. It was sought to be urged on behalf of the respondents that this aspect of the matter had already been gone into by the Learned Single Judge of this Court while disposing of Special Criminal Application No.1446/2004 and connected matters filed by the co-accused decided on 7.5.2004 as also by the Hon'ble Supreme Court while disposing of SLP No.3462/2004 and connected matters by an order dated 13.1.2006. However, I find that Learned Single Judge of this Court was only considering the quashing petition and any reference to this aspect of the matter was wholly incidental.

8. For the same reason, I find that this point was also not not concluded by the Apex Court. I have however, independently examined the matter, but also unable to uphold the contention of the

petitioner. Hence, the petition is dismissed. Rule is discharged.

(Akil Kureshi,J.)

(raghu)